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*Attorneys for Walters Investments, LP*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

<b>IN RE:</b>	§	
<b>SEARS HOLDINGS CORPORATION,</b>	§	<b>CHAPTER 11 CASE</b>
<b><i>et al.</i><sup>1</sup>,</b>	§	
	§	<b>CASE NO. 18-23538 (RDD)</b>
	§	
<b>DEBTORS.</b>	§	<b>(Jointly Administered)</b>
	§	

**WALTERS INVESTMENTS, LP CURE CLAIM OBJECTION**  
**FOR STORE 4389 (McALLEN, TEXAS)**

TO THE HONORABLE ROBERT D. DRAIN, UNITED STATES BANKRUPTCY JUDGE:

Walters Investments, LP (“Walters”) files this Objection to the Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Global Sale Transaction [Docket No. 1731] (the “Cure Notice”) and in support thereof would show as follows:

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); Service Live Inc. (6774); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); Max Serv, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); Sears, Roebuck de Puerto Rico, Inc. (3626); SYW Relay LLC (1870); Wally Labs LLC (None); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); My Gofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); Star West, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); [BlueLight.com](http://BlueLight.com), Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); [Kmart.com](http://Kmart.com) LLC (9022); and Sears Brands Management Corporation (5365). The location of the Debtors’ corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

## **I. BACKGROUND**

1. On October 15, 2018 (“Petition Date”), Sears Holdings Corporation and several of its affiliates, including Kmart Corporation, filed voluntary petitions under chapter 11 of the Bankruptcy Code. The Debtors are operating their business and managing their affairs as debtors-in-possession under 11 U.S.C. §§ 1107 and 1108.

2. As of the Petition Date, Walters was the landlord and Kmart Corporation (“Debtor”) was the tenant under a lease of nonresidential real property located in McAllen, Texas (Kmart Store No. 4389) dated as of July 20, 1970, as amended and modified from time to time (“Lease”). Jack Coogan and Roland E. Walters were the original lessors, the Lease was subsequently assigned and is currently held by Walters.

3. On January 18, 2019, the Debtors filed and served Walters with its *Cure Notice*, including amounts the Debtors believe were required to cure all defaults then existing under such contracts to be assumed (the “Cure Amounts”).

4. The Debtors indicated in the Cure Notice that they intend to assume the Lease with Walters (the “Proposed Assumed Contract”).

5. Pursuant to the Cure Notice, the Debtors identified \$0.00 as the amount which it alleges to be owing Walters under the Proposed Assumed Contract.

6. Walters agrees to the assumption of Proposed Assumed Contract with the Debtors; however, Walters disputes the Proposed Cure Amount in the Cure Notice. Walters’s books and records reflect a cure amount is not less than \$269,978.20 for unpaid 2018 property taxes which are currently due and become delinquent if not paid before February 1, 2019. A copy of the current statement is attached as Exhibit A.

## **II. OBJECTION TO CURE AMOUNT**

7. As of the Petition Date, Walters was the landlord and Kmart Corporation (“Debtor”) was the tenant under a lease of nonresidential real property located in McAllen, Texas (Kmart Store No. 4389) dated as of July 20, 1970, as amended and modified from time to time (the “Lease”). Walters has no objection to the assumption of the Lease provided the proper cure amount is paid.

8. The categorical breakdown of the monetary cure claim is as follows: Unpaid property 2018 taxes due under the Lease: \$269,978.20. See Exhibit A, attached.

9. Pursuant to 11 U.S.C. § 365(b)(1)(A), the Debtors must cure any defaults under the Walters Lease in connection with any proposed assumption, as well as provide adequate assurance of future performance. In this case, Debtors’ Proposed Cure Amount of \$0.00 fails to cure the existing defaults of the Walters Lease, as is required under Section 365 prior to assumption.

10. The correct cure amount is \$269,978.20 for 2018 property taxes, such payment is due no later than January 31, 2019. As a result, under 11 U.S.C. § 365(b)(1)(A), in order to assume the Walters Lease, Walters must receive a cure payment of at least \$269,978.20. Otherwise, the Lease cannot be assumed pursuant to Section 365.

11. This Cure Claim Objection is without prejudice to the fact that other and additional cure claim amounts (a) may exist and/or may become known at a future date and (b) will accrue on an ongoing basis between the filing of this Cure Claim Objection and any subsequent assumption of the Lease. Walters expressly reserves its right to amend or supplement its Cure Claim Objection though and including the effective date of any proposed

assumption and assignment of the Lease.

WHEREFORE PREMISES CONSIDERED, Walters prays (i) that the cure amount set forth in the Cure Notice be corrected to reflect the correct prepetition cure amount of \$269,978.20, which represents prepetition amounts due and owing under the Walters Lease ; (ii) that Walters be paid a cure payment of \$269,978.20 in connection with the assumption of the Lease; and that (iii) Walters be awarded such other and further relief to which it may be justly entitled at law or in equity.

Dated: January 25, 2019  
San Antonio, Texas

RESPECTFULLY SUBMITTED,

LANGLEY & BANACK, INCORPORATED  
745 E. Mulberry, Suite 900  
San Antonio, Texas 78212  
(210) 736-6600 Telephone  
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By: /s/ David S. Gragg  
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Natalie F. Wilson  
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ATTORNEYS FOR WALTERS  
INVESTMENTS, LP

### **CERTIFICATE OF SERVICE**

I hereby certify that on January 25, 2019, a true and correct copy of the foregoing document was electronically transmitted to the Clerk of the Court using the ECF System for filing and transmitted electronically to all ECF participants registered to receive electronic notice in the bankruptcy proceeding including the parties below:

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(served via attorneys)

DEBTORS' COUNSEL

(served electronically)

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New York, NY 10014  
Paul Schwartzberg  
Richard Morrissey

/s/ David S. Gragg  
David S. Gragg

# EXHIBIT A

Pg 8 of 8  
2018 TAX STATEMENT



PABLO (PAUL) VILLARREAL JR., PCC  
HIDALGO COUNTY TAX ASSESSOR - COLLECTOR  
PO BOX 178  
EDINBURG, TEXAS 78540

**Certified Owner:**

WALTERS INVESTMENTS  
C/O KMART OF TEXAS LP  
3333 BEVERLY RD  
HOFFMAN ESTATES, IL 60179-0001

**Legal Description:**

HIDALGO CANAL CO-MC N W 12.81 AC-LOT 10  
SEC 7 EXC 2.63 AC PLUS LTS 1 THRU 6 EXC  
W175' OF LT 1 FUNNILLE S/D

**Account No:** H2550-00-007-0010-02**Appr. Dist. No.:** 189483**Legal Acres:** 11.7500**Parcel Address:** 1801 S 10TH ST**As of Date:** 01/23/2019**Print Date:** 01/23/2019

Market Value		Appraised Value	Assessed Value	Capped Value	Homesite Value	Agricultural Market Value	Non-Qualifying Value
Land	Improvement						
\$9,008,208	\$4,114,730	\$13,122,938	\$13,122,938	\$0	\$0	\$0	\$13,122,938
Taxing Unit		Assessed Value (100%)	Exemptions		Taxable Value	Tax Rate	Tax
			Code	Amount			
HIDALGO COUNTY		\$13,122,938		\$0.00	\$13,122,938	0.5800000	\$76,113.04
DRAINAGE DIST #1		\$13,122,938		\$0.00	\$13,122,938	0.0951000	\$12,479.91
MCALLEN ISD		\$13,122,938		\$0.00	\$13,122,938	1.1550000	\$151,569.93
SOUTH TEXAS ISD		\$13,122,938		\$0.00	\$13,122,938	0.0492000	\$6,456.49
SOUTH TEXAS COLLEGE		\$13,122,938		\$0.00	\$13,122,938	0.1780000	\$23,358.83

**Total Tax:** \$269,978.20**Total Tax Paid to date:** \$0.00**Total Tax Remaining:** \$269,978.20**Exemptions:****AMOUNT DUE IF PAID BY:**

01/31/2019 0%	02/28/2019 7%	04/01/2019 9%	04/30/2019 11%	05/31/2019 13%	07/01/2019 15%
\$269,978.20	\$288,876.67	\$294,276.22	\$299,675.79	\$305,075.37	\$310,474.93
07/31/2019 18 + up to 15%	09/02/2019 19 + up to 15%	09/30/2019 20 + up to 15%	10/31/2019 21 + up to 15%	12/02/2019 22 + up to 15%	12/31/2019 23 + up to 15%
\$366,360.42	\$369,465.16	\$372,569.93	\$375,674.66	\$378,779.42	\$381,884.15

**School Information:**

MCALLEN ISD 2018 M&O 1.1550000 I&S .00000000 Total 1.1550000 2017 M&O 1.1550000 I&S .00000000 Total 1.1550000

PLEASE CUT AT THE DOTTED LINE AND RETURN THIS PORTION WITH YOUR PAYMENT.

4-168

**Print Date:** 01/23/2019

PLEASE NOTE YOUR ACCOUNT NUMBER ON YOUR CHECK AND MAKE CHECKS PAYABLE TO:

PABLO (PAUL) VILLARREAL JR., PCC  
HIDALGO COUNTY TAX ASSESSOR - COLLECTOR  
PO BOX 178  
EDINBURG, TEXAS 78540  
(956) 318-2157



\* H 2 5 5 0 0 0 0 0 7 0 0 1 0 0 2 \*

H2550-00-007-0010-02

WALTERS INVESTMENTS  
C/O KMART OF TEXAS LP  
3333 BEVERLY RD  
HOFFMAN ESTATES, IL 60179-0001

**AMOUNT PAID:**

\$ \_\_\_\_\_

00001894830026997820